

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Statutory Review of the System
for Regulating Rates and Classes
for Market Dominant Products

Docket No. RM2017-3

ORDER DENYING MOTION FOR ISSUANCE OF INFORMATION REQUEST

(Issued February 6, 2018)

On January 19, 2018, the National Postal Policy Council and National Association of Presort Mailers (Joint Movants) filed a motion requesting that the Commission issue an information request to the Postal Service.¹ In seeking additional information, the Joint Movants propose the following questions:

1. Please provide the Decision Analysis Report (“DARs”) (or Reports if more than one) from 2013 until January 2018 upon which capital investment programs of \$30 million or more were justified. Motion at 1.
2. Please provide any reviews or reports prepared by or on behalf of the Postal Service that reviewed the capital programs based on the DARs provided in Question 1 after they were implemented and assessed

¹ National Postal Policy Council and National Association of Presort Mailers Motion for Issuance of Information Request, January 19, 2018 (Motion).

whether the return on investment in the DAR that was used in approving the program was in fact achieved. *Id.*

The Association for Postal Commerce (PostCom) filed a statement in support of the Motion.² The Postal Service filed a response in opposition to the Motion.³

For the reasons discussed below, the Commission denies the Motion.

Joint Movants Motion. The Joint Movants contend that answers to the above questions are necessary to evaluate the proposals contained in the Commission's Notice of Proposed Rulemaking related to the provision of additional funding for capital investments, retained earnings, improved operational efficiency, and maintenance of service standards.⁴

The Joint Movants state that the Commission has not evaluated or reviewed the actual effectiveness or success of past capital investment in reducing costs or improving operation efficiencies. Motion at 2. They suggest that the Postal Service "may not always manage its investments well." *Id.* at 3. Thus, the Joint Movants contend that the Commission should know whether recent investments have been worthwhile before authorizing additional funding for this purpose. *Id.*

PostCom statement in support. PostCom urges the Commission to grant the Motion because the requested information "is critical to the Commission's review of the Postal Service's performance under the current system of ratemaking and the evaluation of whether the Commission's proposed rules will enhance that performance." PostCom Statement at 1.

² Statement of Support of the Association for Postal Commerce for the Motion of National Postal Policy Council and National Association of Presort Mailers for Issuance of Information Request, January 23, 2018 (PostCom Statement).

³ Opposition of the United States Postal Service to Motion for Issuance of Information Request, January 26, 2018 (Postal Service Response).

⁴ Motion at 1-2. See Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

PostCom contends that it is necessary for the Commission to obtain the requested information to make an informed decision in this docket. *Id.* PostCom states that the information “will inform the Commission regarding the Postal Service’s actual capital needs and history of capital investments, allowing it to better evaluate the Postal Service’s revenue needs in relation to these investments, assess its management of prior investments, and determine whether the proposed rules bear a reasonable relationship to these needs.” *Id.* at 2. PostCom contends that granting the Postal Service additional revenue authority without evaluating the Postal Service’s actual capital needs or whether past capital investments have enhanced financial stability and operational efficiency would be arbitrary and capricious. *Id.*

Postal Service’s response in opposition. The Postal Service opposes the Motion arguing that the requested information is not relevant to Order No. 4258, and that any benefit to producing the information would be far outweighed by the burden to the Postal Service in producing the information. Postal Service Response at 1.

The Postal Service summarizes that the Commission’s discussion of capital spending in Order No. 4258 is focused on overall capital spending levels, rather than on individual spending decisions. *Id.* It states that the Commission has noted that capital spending levels declined significantly during the PAEA regime and of the necessity to restore capital spending to prior, adequate, levels to ensure achievement of objective 5, as well as other objectives. *Id.* at 2. It states that there is no suggestion that capital spending levels are not sufficient because of imprudent management decisions in the past. *Id.* The Postal Service concludes that analysis of prior individual capital spending decisions is “irrelevant to the question as to the design of a regulatory system that enables a prospective level of capital spending that is needed to ensure achievement of the objectives going forward.” *Id.* at 2-3.

The Postal Service also adds that two U.S. Postal Service Office of the Inspector General reports conclude that the DARs during the identified time period “were

reasonable business decisions or were in the best interest of the Postal Service and identified no systemic issues across all DARs.” *Id.* at 5, n.14.

Finally, the Postal Service explains that the production of the approximately 40 responsive DARs (and analysis related to question 2) would involve consultation with many internal organizations, review of documentation, and potential redaction and application for non-public treatment, which would impose a significant burden on the Postal Service. *Id.* at 6. Furthermore, the Postal Service states that “the Commission has never deemed oversight of internal, predecisional, deliberative, and commercially sensitive DARs to be necessary to its responsibilities.” *Id.* Thus, because the burden of producing the information would outweigh the relevance of the information, the motion should be denied. *Id.* at 7.

Commission Analysis. Under the Administrative Procedure Act, when an agency undertakes an informal rulemaking it is within the agency’s discretion to decide what information is necessary. Neither the Administrative Procedure Act nor the Commission’s rules require the Commission to propound specific questions in this type of proceeding. As the Commission previously stated, “[t]he Commission did not contemplate discovery within this proceeding [Docket No. RM2017-3], and its view remains unchanged at this time. If, however, the Commission later determines that additional information is necessary to facilitate its review, it will consider requesting such information in accordance with its regulations.”⁵

The Commission does not find that the information requested by the instant Motion is necessary at this time. As summarized by the Postal Service, the Commission’s proposals in Order No. 4258 are based on the Commission’s analysis of what would be appropriate general capital spending levels to ensure achievement of objective 5, as well as other objectives. These levels are based on the Postal Service’s historic spending levels, and not on any specific initiative that the Postal Service has

⁵ Order on Motions for Issuance of Information Requests, January 30, 2017, at 3 (Order No. 3763). See *also* Order Denying Motion for Reconsideration, February 24, 2017 (Order No. 3807).

previously undertaken. Thus, the information requested by the Joint Movants is not necessary to evaluate the Commission's proposals in this docket.

The Commission's proposals in Order No. 4258 also include performance requirements that must be met prior to additional funding becoming available to further the long term financial stability of the Postal Service. These requirements incentivize the Postal Service to put future capital expenditure to good use, and make the analysis of individual Postal Service initiatives unnecessary.

Regardless, the Commission has established robust opportunities for comment and reply comment in this docket. Interested persons are encouraged to comment on any matter related to the Commission's review of the market dominant ratemaking system and the Commission's proposals presented in Order No. 4258. This Order is not intended to place limitations on those comments.

In conclusion, for the foregoing reasons, the Commission denies the motion.

It is ordered:

The National Postal Policy Council and National Association of Presort Mailers Motion for Issuance of Information Request, filed on January 19, 2018, is denied.

By the Commission.

Stacy L. Ruble
Secretary